

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of
Numbering Resource Optimization

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CC Docket No. 99-200

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COMMENTS OF TIME WARNER TELECOM

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TABLE OF CONTENTS

	PAGE
I. Discussion	1
II. Conclusion	11

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COMMENTS OF TIME WARNER TELECOM

Time Warner Telecom ("TWTC")¹, by its attorneys, hereby submits these comments in response to the Further Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

I. Discussion

Telecommunications carriers depend on the availability of telephone numbers to serve their customers and all telecommunications carriers benefit from the North American Numbering Plan ("NANP"). TWTC commends the Commission for adopting aggressive measures in its recent Report and Order (released March 31, 2000) ("Order") in the instant proceeding that should help to delay the exhaust of numbers. But for competition to thrive, the Commission must adopt additional policies that promote the most efficient use of numbering

¹ Time Warner Telecom is a leading optical network, facilities-based provider of integrated telecommunications solutions for businesses. The Company currently serves business customers with last-mile broadband connections for data, Internet, and voice in 21 U.S. markets.

resources while assuring that the numbering administration rules do not result in preferential treatment for any class of carriers.

In this regard, the Commission sought comment in the Notice on four aspects of numbering administration: (1) the level the Commission should establish as a minimum utilization threshold that carriers must meet in order to obtain growth NXX codes, (2) whether covered CMRS carriers should be granted a transition period between the time they implement local number portability ("LNP") and the time they must comply with thousands-block pooling, (3) whether carriers should be required to pay for numbering resources, and (4) the level of shared industry and direct carrier-specific costs associated with thousands-block number pooling. TWTC addresses each of these issues below.

First, before establishing a minimum utilization threshold for obtaining growth blocks of 10,000 numbers, the Commission must clarify under what circumstances such a threshold would apply. The Order does not provide any specifics in this regard. It seems appropriate, however, that a minimum utilization should apply where a carrier is not participating in thousands-block pooling. See Order ¶ 142 (stating that the Commission will not require carriers participating in thousands-block pooling to meet utilization thresholds before obtaining growth codes).

Thus, a carrier should not be subject to a utilization threshold to the extent that the carrier possesses the technical

capability to participate in thousands-block pooling (because it has implemented LNP) and is providing service using numbers in an NPA for which thousands-block pooling has gone into effect. However, where the same carrier is providing service using numbers that are not part of an NPA for which thousands-block pooling has gone into effect, that carrier should also be subject to a utilization threshold until pooling is implemented in that NPA. In addition, carriers that are not LNP-capable, and therefore lack the technical capability to participate in thousands-block pooling even where they are using numbers in an NPA for which thousands-block pooling has gone into effect, should also be subject to a utilization threshold.

As to the appropriate level of a utilization threshold, that determination must be informed by the manner in which the Commission calculates utilization. Under the method adopted in the Order, the Commission appears to treat "intermediate," "reserved," "aging," and "administrative" numbers as available but not utilized for purposes of the utilization threshold. See Order ¶ 109.² There is a risk that such an approach will cause a

² There is some internal inconsistency in the Order in this regard, since the Commission defines "available numbers" as excluding intermediate, reserved, aging and administrative numbers. See Order ¶ 35. Thus, in one part of the Order the Commission treats these numbers as not "available" as a generic matter, and in another part of the Order the Commission treats these same numbers as available for assignment for purposes of calculating "utilization." This apparent contradiction warrants clarification.

significant percentage of the numbers in a carrier's NXX to be treated as available and not utilized even though those numbers are unavailable to a carrier because of circumstances beyond its control. This problem is most clearly illustrated by "intermediate" numbers, those numbers assigned to a carrier or non-carrier intermediary that in turn assigns the numbers to end users. See id. ¶ 20. Facilities-based carriers that own NXXs have typically provided such intermediaries blocks of numbers for eventual assignment to end users. But if such an intermediary does not assign the numbers in question quickly to end users, the underlying facilities-based carrier will be penalized under the utilization calculation methodology adopted by the Commission.

It seems likely that, over time, NXX holders could modify their contracts with intermediaries to diminish the possibility that the NXX holder will be penalized for inefficient third-party behavior. But such modifications take time, since contracts with intermediaries generally cannot be amended without the consent of the intermediary (consent that will obviously not be available in most cases) and such contracts often do not expire for one or more years.

Moreover, while NXX holders can also increase the efficiency with which they use "reserved" and "aging" numbers, such improvements also cannot be instituted over night.³ For example,

³ NXX holders appear to have less ability to increase the efficiency with which administrative numbers are used since those uses are largely dictated by industry standard

it will take time to alter the terms under which numbers are made available to customers in reserved status since such arrangements may also be subject to existing contracts in many cases.

Thus, the calculation methodology adopted by the Commission for determining utilization levels will yield lower utilization figures for carriers than a methodology that excluded "intermediate," "reserved," "aging" and "administrative" numbers from the equation, and carriers have little or no ability to adjust quickly to this fact. It follows that the Commission should establish an initial utilization threshold that is relatively low. While TWTC does not have a specific percentage to recommend, it would seem appropriate to set the initial level at an average utilization level in the industry, using the methodology adopted by the Commission for determining utilization.

As the Commission has tentatively concluded in the Notice, it makes sense then to increase the threshold over time as carriers are able to increase the efficiency with which they use numbering resources. See Notice ¶ 248. The rate of increase

procedures, such as the need for Location Routing Numbers and Temporary Local Directory Numbers. Indeed, for this reason it would have made sense for the Commission to treat at least some administrative numbers as "utilized" under its utilization threshold calculation or to have excluded them entirely from the utilization calculation. In any event, these comments do not focus on administrative numbers because they comprise a de minimis percentage of any particular NXX.

should be gradual, however, given the obstacles that NXX holders face in increasing the level of efficiency.

Furthermore, for wireline carriers such as TWTC, utilization thresholds should be calculated on a rate-center basis, since it is on this basis that wireline carriers use numbers. A wireline carrier with a high utilization rate in a particular rate center must be able to obtain more numbers for that rate center, notwithstanding its utilization levels in other rate centers associated with NXXs in the same NPA. This is because a carrier cannot transfer numbers from an NXX associated with one rate center to another rate center. It is probably appropriate, however, to calculate utilization for carriers that do not use rate centers, such as CMRS carriers, on an NPA basis.

Second, the Commission should be sure to require covered CMRS carriers to participate in thousands-block pooling as soon as it is technically feasible for them to do so. The deadline for CMRS deployment of LNP (November 24, 2002) is still approximately two and a half years away. It seems reasonable to expect that within that time period the CMRS community will be able to resolve the technical challenges created not only for CMRS LNP but also for CMRS thousands-block pooling. Thus, the Commission should permit a transition period between the deployment of LNP and number pooling for a CMRS carrier only upon a specific demonstration, far in advance of the deadline for LNP

deployment, that simultaneous implementation of LNP and thousands-block pooling is technically infeasible.

Third, the Commission should not require carriers to pay for numbers. There are two major risks associated with this proposal. Perhaps most importantly, setting a price on numbers would only further increase the entry barriers in the local market. The Commission would presumably only apply a market-based approach to numbers on a going-forward basis. As a result, a much higher percentage of new entrants' costs would be attributable to the cost of acquiring numbers than would be the case for their ILEC competitors.⁴ Indeed, the problem is especially serious under the current rate center structure which forces a CLEC to obtain a separate block of numbers for each rate center in an area it seeks to enter. Until the Commission implements rate center consolidation, new entrants would be disproportionately burdened by paying for numbers within the outdated rate center boundaries of the ILECs that only promote inefficiency in use of numbering resources.

Furthermore, as TWTC explained in its comments filed on July 30, 1999 in this proceeding, requiring carriers to pay for numbers could create an incentive for incumbents to engage in

⁴ See Administration of the North American Numbering Plan, Report and Order, 11 FCC Rcd 2588, ¶ 100 (1995) ("NANPA Order") ("We do not support funding the NANP Administrator solely through per-number charges because per-number charges would be inequitable, as they may fall disproportionately on the fastest growing users of numbers").

predatory behavior. ILECs could engage in such behavior, for example, by out-bidding competitors for numbers in order to preserve market share that could be lost to the competitors over time.⁵

In any event, requiring carriers to pay for numbers is probably unnecessary to promote efficient use in light of the aggressive measures the Commission is already taking to slow number exhaust. The Commission should only consider more aggressive number optimization measures after it has time to evaluate whether the measures it is currently implementing are effective and sufficient.

If the Commission were to implement a scheme for paying for numbers, it would seem that the most logical use of the proceeds would be to cover the shared industry costs of administering thousands-block pooling and of the administration of the North American Numbering Plan.

Fourth, TWTC is not able to provide the Commission with information as to industry-wide costs or direct carrier-specific costs associated with thousands-block pooling. It is important to reiterate, however, that unless the costs of thousands-block pooling are very substantial, the Commission should treat those costs as infrastructure costs and not allow ILECs to recover them

⁵ See TWTC Comments, CC Docket No. 99-200 (July 30, 1999) at 22, citing Stephen Breyer, Regulation and Its Reform at 274 (1982) (explaining possible incentive of participants in "marketable rights" scheme, such as the Notice suggests here, to monopolize a scarce resource).

through exogenous adjustments to access charges or through some other new interstate access charge mechanism. Rather, ILECs should be allowed to recover these costs to the extent that the current price cap rules permit them to increase rates for existing services (i.e., where they have head room under the cap). In this manner, ILECs would be subject to just the kind of marketplace decisions that CLECs and all other competitive carriers must confront.

It should be emphasized that direct carrier-specific costs (i.e., internal carrier upgrades required to support thousands-block pooling) should not be significant enough to place an undue burden on ILECs. Most carrier-specific costs resulting from modifications needed to implement thousands-block pooling have already been incurred as part of LNP implementation, and therefore, are being recovered already through the LNP recovery mechanism.⁶ It also seems unlikely that the ILECs' share of the industry-wide administration costs will be significant.

On the other hand, if the Commission determines that the ILECs' thousand-block pooling costs are so great as to warrant a special means of recovery, it must try to avoid giving the ILECs an artificial advantage over competitive carriers. That is, there is a risk that a special thousands-block pooling recovery mechanism would allow ILECs to recover most of their costs

⁶ See Comments of New York State Department of Public Service, CC Docket No. 99-200 (July 29, 1999) at 11.

through the provision of access services in areas in which they face little or no competition. This would place CLECs, that do not have this luxury, at a competitive disadvantage.⁷

The most appropriate means of limiting the harmful effects of an access charge mechanism for recovery of thousands-block pooling costs would be to permit an exogenous cost increase to the overall price cap index ("PCI") of each ILEC. Such an adjustment would then be reflected in an appropriate weighted increase in each individual price cap basket PCI. This approach spreads cost recovery across the maximum number of service categories and therefore diminishes somewhat the ILECs' opportunity to target cost recovery to areas that are not subject to competition.

⁷ Furthermore, the proposal for recovery through access charges may violate the competitive neutrality standard of section 251(e)(2) of the Telecommunications Act of 1996. See 47 U.S.C. § 251(e)(2); See Telephone Number Portability, Third Report and Order, 13 FCC Rcd 11701, ¶39 (1998) ("If the Commission ensured the competitive neutrality of only the distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering from other carriers. For example, an [ILEC] could redistribute its number portability costs to other carriers by seeking to recover them in increased access charges to IXCs. Therefore, we find that section 251(e)(2) requires the Commission to ensure that both the distribution and recovery of interstate and interstate number portability costs occur on a competitively neutral basis.").

II. Conclusion

The Commission should establish number administration rules in accordance with the recommendations made herein.

Respectfully submitted,



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